

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Stephen D. Cunnison, Chair
Douglas C. Miller, Committee Counsel, 415-865-7535,
douglas.miller@jud.ca.gov

DATE: August 18, 2003

SUBJECT: Miscellaneous Forms: *Petition to Establish Record of Death*, and
Declaration in Support of Petition to Establish Record of Death
(approve forms MC-360 and MC-360A) (Action Required)

Issue Statement

Health and Safety Code sections 103450–103490 provide for a proceeding to judicially establish a record of a birth, death, or marriage, where the event is not registered or a certified copy of a record of the event cannot be obtained. A person beneficially interested in establishing a record of one of these events may commence the proceeding by filing a verified petition in the superior court.

Many courts have developed local form petitions to establish these records. These forms vary considerably in the information they request and in their design and layout. Judicial Council forms would promote uniformity of practice across the state under the Health and Safety Code provisions.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2004, approve new forms MC-360 and MC-360A for optional use, in order to promote statewide uniformity of practice in the proceeding to establish a record of death under Health and Safety Code sections 103450–103490.

Copies of proposed forms MC-360, *Petition to Establish Record of Death*, and MC-360A, *Declaration in Support of Petition to Establish Record of Death*, are attached at pages 6 and 7.

Rationale for Recommendation

The Probate and Mental Health Advisory Committee recommends approval of a new form petition to establish a record of death and a separate form supporting declaration. These forms would satisfy the requirements of the Health and Safety Code provisions to establish a record of a person's death. They would replace numerous local court forms and attorney-drafted petitions with Judicial Council forms for statewide use.

Proceedings under the Health and Safety Code to establish records of births, marriages, or deaths are not probate proceedings. However, Health and Safety Code section 103470 provides that petitions to establish these records must be heard by the judge who regularly hears probate matters or, if the court has a probate department, must be assigned to that department. The committee elected to develop forms for the petition to establish a record of death because of section 103470 and because that proceeding is similar to a proceeding to establish death under Probate Code sections 200–204.¹

Item 6 of proposed form MC-360A, the declaration in support of the petition to establish a record of death, requires the declarant to identify and describe pending litigation to which the record is important and to provide information about the case and about the parties and attorneys involved in the case. The advisory committee has included item 6 in the form to give the court enough information about the litigation to enable it to frame an order prescribing notice if the court decides that such notice is necessary to prevent a fraud on the court or on any parties to the litigation.²

The advisory committee recommends that the new forms be approved as optional forms until Judicial Council forms are adopted concerning birth and marriage records under the Health and Safety Code provisions, at which time all of the forms should be made mandatory. Rule 7.101 of the California Rules of Court requires a Judicial Council form to be used if one has been provided. However, under rule 7.1(a), rule 7.101 is applicable to every action or proceeding *to which the Probate Code applies*.

¹ The proceeding under the Probate Code is available to establish the fact of a person's death where that fact affects title to real or personal property. (Prob. Code, § 200.)

The committee decided not to develop form petitions to establish records of births or marriages under the Health and Safety Code provisions at this time because (1) there is no analogous probate proceeding to establish these records, and (2) the committee is concerned that the subjects of these other petitions may be outside its purview. The committee has referred proposals to develop forms for these petitions to the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee.

² Probate Code section 1202 authorizes the probate court to prescribe further or additional notice of any matter. The Health and Safety Code provisions impose no notice requirements, except where there has been a mass fatality incident, defined in section 103451. In that event the petitioner must make "a reasonable effort" to give notice of the hearing on the petition to the decedent's heirs to the second degree of relationship (parents, children, siblings, grandparents, and grandchildren). However, the validity of the proceeding is not affected by failure to give the notice (Health & Saf. Code, § 103466).

Although Health and Safety Code section 103470 requires the petition to establish a death record to be heard in the probate department of the court or by the judge who regularly hears probate matters, the Probate Code does not apply to the proceedings. Therefore, rule 7.101 does not preclude approval of an optional form.

The policy behind rule 7.101—and rule 201.1, the rule that defines and prescribes the use of mandatory Judicial Council forms generally—is to promote uniformity of practice in the courts of the state. However, making these proposed Judicial Council forms mandatory at this time would not advance that policy because the forms address only one of the three records authorized under the Health and Safety Code provisions. Local forms for petitions to establish birth or marriage records would continue to be used side by side with these forms, although local forms for the petition to establish record of death could no longer be used. That could be particularly confusing in courts that have adopted all-purpose form petitions that can be used to apply for any of the authorized records.³

Alternative Actions Considered

Approval or adoption of Judicial Council forms to establish records under the Health and Safety Code provisions is the only way to bring some degree of uniformity to practice under those provisions. The committee considered the following alternative methods of proposing new forms:

1. Proposing separate form petitions to establish birth and marriage records and supporting declarations in addition to the forms now proposed,

The committee has instead referred proposals to develop these other forms to other advisory committees. The committee strongly supports the development of these forms.

2. Developing an all-purpose petition that could be used to establish birth, marriage, or death records,

This approach was rejected because the showings necessary to support petitions for each of the records are materially different and because separate forms for each type of record are easier to use and to understand.

3. Holding back these proposed forms until Judicial Council forms are developed for birth and marriage records.

The committee decided to recommend approval of these forms to establish death records now because it believes that they are clearer and easier to use than the

³ An example is the Superior Court, County of Ventura's local form VN-151.

local forms it has reviewed and would immediately benefit persons who need to apply to establish death records.

Comments From Interested Parties

This proposal was circulated to an expanded list of probate practitioners and probate law sections of local bar associations in addition to the AOC's regular mailing list, in the spring 2003 circulation for comment. This committee's invitation to comment solicited comments on whether these forms should be optional, at least until form petitions are developed to establish records of births or marriages.

Seven comments were received on these forms, all in favor of their adoption. Three commentators recommended that the forms be approved as optional forms until Judicial Council forms are developed for all three records authorized by the Health and Safety Code provisions. The principal reason offered to make the forms optional is to reduce confusion because many courts have local form petitions to establish all of the authorized records. If these proposed Judicial Council forms are made mandatory, the local forms would become invalid only for death records. That could be particularly confusing for self-represented persons because some of the local forms are combined-petition forms, which can be used to seek orders establishing any of the three records identified in the statute.

On the other hand, Mr. Stephen Love, Chief Executive Officer, Superior Court, County of San Diego, expressed the view that the forms should be mandatory because the petitions are heard in the probate court and therefore should be mandatory, like all probate forms.

Every commentator who discussed the issue said that form petitions should be developed for birth and marriage records in addition to death records. No one recommended that form petitions for birth and marriage records should not be developed.

In response to these comments, the advisory committee reversed its earlier decision to propose these forms as mandatory forms at this time, at least until forms are developed for petitions to establish birth and marriage records.

Ms. Harlean Carroll, a probate staff attorney employed by the Superior Court, County of Los Angeles, advised that there is a form order that should be referenced in the proposed form petition. Ms. Carroll was referring to a two-part combined form order and record certificate produced by the Office of Vital Records in the California Department of Health Services. Its use is mandated by Health and Safety Code section 103485.⁴ The form, designated VS 109 and entitled *Order Establishing Fact of Death/Court Order*

⁴ Section 103485 says in material part: "[t]he order shall be made in the form and upon the blank prescribed and furnished by the State Registrar"

Delayed Registration of Death, must be obtained from the Department of Health Services or from a county recorder or health department.

Form VS 109 must be presented to the court at or before the hearing on the petition to establish record of death. The certificate portion of the form must be sent to the Department of Health Services with a certified copy of the order portion after the judge signs the order. Form VS 109 is not a Judicial Council or local court form, and is not available from the court.⁵

Completing the form order and certificate, presenting it to the court for the judge's signature when the petition is heard, and sending a copy of the form order and the original certificate to the Department of Health Services to establish the death record are complicated steps. The instructions for obtaining, completing, and filing the form order and certificate are four pages long. An attorney would have difficulty accomplishing those tasks without the instructions. A self-represented person could find it nearly impossible to do so.

Because of these difficulties, the advisory committee responded to Ms. Carroll's comment by revising the proposed petition, form MC-360, to provide a "Notice" text box advising petitioners that they must provide an order to the court, and advising them how to get copies of the Department of Health Services form order and certificate and instructions for its use.

A chart showing the public's comments and the advisory committee's responses is attached at pages 8–11.

Implementation Requirements and Costs

The normal costs incident to the adoption of a completely new form will be incurred. However, greater statewide uniformity of practice under the Health and Safety Code provisions should reduce the overall costs of conducting the proceedings authorized by those provisions.

Attachments

⁵ Instructions for obtaining, completing, and filing the order are available online from the Office of Vital Records. The online address is www.dhs.ca.gov/hisp/chs/OVR/Amendments/Amendmentindex.htm.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT NO. 10 09/25/03
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN THE MATTER OF (Name):	
PETITION TO ESTABLISH RECORD OF DEATH	CASE NUMBER:
Notice: At or before the hearing on this petition, the petitioner must provide an order for the judge to sign. The order is part of form VS 109, issued by the Office of Vital Records, California Department of Health Services. Form VS 109 may be obtained from that department, or from a county recorder or health department. Information about form VS 109, including instructions on how to get it, and how to complete and file it, is available online at www.dhs.ca.gov/hisp/chs/OVR/Amendments/Amendmentindex.htm .	

1. a. Petitioner (name): _____ is a beneficially interested person, entitled under section 103450 of the California Health and Safety Code to an order establishing the fact and the date and place of the death of the deceased person named in item 2.
- b. Petitioner's beneficial interest in this matter is ☐ stated in the space below ☐ stated in Attachment 1b.

2. **Deceased person:**

- a. Name: _____
- b. Date of death: _____
- c. Place of death: County of _____, State of _____

3. (Check one of the following):

- a. ☐ There is no official record of the fact, date, and place of the death of the deceased person.
- b. ☐ A certified copy of the official record of the death of the deceased person cannot be obtained for the reasons ☐ stated in the space below ☐ stated in Attachment 3b.

4. The deceased person resided at time of death at (street address and city):

County of _____, State of _____

5. Petitioner requests that the court make an order determining that the death of the deceased person did in fact occur on the date and at the place stated in item 2 above, as shown by the form MC-360A, *Declaration in Support of Petition to Establish Record of Death* and attachments, filed herewith, and by other proofs adduced at the hearing.

6. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

(SIGNATURE OF ATTORNEY)

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except as to those matters stated on information and belief, and as to those matters, I am informed and believe them to be true.

Date: _____

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date:

(SIGNATURE OF DECLARANT)

Petition to Establish Record of Death and Declaration in Support of Petition to Establish Record of Death

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Ms. Harlean Carroll Probate Attorney, Superior Court of California, County of Los Angeles.	AM	N	<p>MC-360 and MC-360A</p> <p>(1) I think that these forms should be optional until all three types of petitions are made subject to these rules;</p> <p>(2) I think that the proposed forms can be confusing when asking for date and place of death, as many of these cases deal with circumstances where the decedent allegedly died from drowning and no body was ever found, and other such circumstances; and</p> <p>(3) There is a form order and these forms should be coordinated with the order.</p>	<ol style="list-style-type: none"> 1. The advisory committee agrees with this recommendation. It has reversed its earlier decision to recommend that these forms be adopted as mandatory forms. 2. The petitioner or the declarant can only allege or state what they know. If they don't know one of these facts, they can allege or state the circumstances that demonstrate why they don't or can't know that fact. 3. Ms. Carroll is correct. The form order from the Department of Health Services is mandated by Health and Safety Code section 103485. The proposed form petition has been revised to include a "Notice" text box advising prospective petitioners of the need to obtain the form order and certificate from the State Department of Health Services or from a county recorder or health department, and that instructions concerning the form are available from the Department of Health Services' Web site.

Petition to Establish Record of Death and Declaration in Support of Petition to Establish Record of Death

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
2.	Mr. Robert Gerard President, Orange County Bar Association.	A	Y	No specific comments were made.	No response necessary.
3.	Mr. Stephen Love Executive Officer, Superior Court of California, County of San Diego.	A	N	<p>I concur with comments that urge that forms should be created for petitions to establish birth or marriage records. These forms would promote consistency throughout the state and assist self-represented litigants, who often do not know how to bring an appropriate petition. Concern about drafting these other forms because there is no analogous Probate Code section pertaining to birth or marriage records should be minimized by the Health and Safety Code requirement that the probate court is to hear all of these petitions.</p> <p>Requiring notice depending on answer at item 6 may be stretching the authority granted by Probate Code 1202, which allows the court to require additional notice. Section appears to reference actions authorized under the Probate Code. This is a Health and Safety Code action. The Health and Safety Code provisions are silent regarding notice requirements for this petition.</p> <p>Rule 201.1 states that forms used in a “probate proceeding” are mandatory. The Health and Safety</p>	<p>This advisory committee has referred the question of developing and proposing forms for petitions to establish birth and marriage records to other (possibly more appropriate) advisory committees. The committee does support the development of such forms.</p> <p>Item 6 of form MC-360A, the supporting declaration, requests information about pending litigation to which the death record is important. The invitation to comment noted that if the death record is important to pending litigation, the information provided in item 6 would enable the court to order additional notice under Probate Code section 1202 <i>or under the court’s inherent power to protect the interest of others involved in the litigation or to prevent a fraud on the court.</i></p> <p>Rule 201.1, cited in the invitation to comment, defines a mandatory Judicial</p>

Petition to Establish Record of Death and Declaration in Support of Petition to Establish Record of Death

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				Code requires the probate court to hear these matters. Therefore, even though this procedure falls outside the Probate Code, it is a procedure within the jurisdiction of the Probate Court, and a mandatory form would be appropriate.	<p>Council form but does not compel all probate forms to be mandatory. Rule 7.101, made applicable by rule 7.1 to all proceedings <i>to which the Probate Code applies</i>, requires an applicable Judicial Council form to be used. All Judicial Council probate forms have in fact been mandatory since January 1, 2000. However, the Probate Code does not apply to these proceedings under the Health and Safety Code, so rule 7.101 does not compel adoption of these forms as mandatory forms.</p> <p>The policy of uniformity that is behind the designation of a form as mandatory would not be advanced by making these forms mandatory in the absence of forms to establish birth and marriage records because existing local forms to establish those records would continue to be used.</p>
4.	Ms. Sandra Mason Director of Civil Operations, Superior Court of California, County of San Luis Obispo.	A	N	No specific comments were made.	No response necessary.

SPR03-58

Petition to Establish Record of Death and Declaration in Support of Petition to Establish Record of Death

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
5.	Ms. Margaret Anne Payne Member, Trusts and Estates Administration Committee, Trusts and Estates Section, State Bar of California.	AM	Y	We support SPR03-58 and recommend that the new form establishing a person's death be optional until such time as new forms have also been prepared for establishing a person's death and marriage, and at that time, that all three forms be mandatory.	See the response to the first numbered comment of Ms. Harlean Carroll, above.
6.	Ms. Sandra Riley Supervising Probate Attorney, Superior Court of California, County of Los Angeles.	A	N	Suggest forms be optional because many courts have multipurpose forms to establish fact of birth, death, or marriage and another form for this single purpose will be confusing to pro per litigants.	See the response to first numbered comment of Ms. Harlean Carroll, above.
7.	Ms. Emily Stuhlbarg President, Emily Stuhlbarg and Associates, Inc., County of Los Angeles, private professional conservator.	A	N	No specific comments were made.	No response necessary.